

In the Matter of Merchant Mariner's Document No. Z-384471-D2 and all other Seaman Documents

Issued to: ANTONIO LIPARI

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1232

ANTONIO LIPARI

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 March 1960, an Examiner of the United States Coast Guard at New York, New York suspended, on probation, Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as a deck maintenanceman on the United States SS CHICKASAW under authority of the document above described, on 29 November 1959, Appellant disobeyed a lawful order; on 2 December 1959, he failed to join the ship; and on 7 December 1959, Appellant was absent from his duties without authority.

At the beginning of the hearing on 16 December 1959, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the specification alleging his failure to join. He entered pleas of not guilty to the other two specification.

In his opening statement, Appellant said that he did not obey the order on 29 November because it was a Sunday and he was not required to work on Sundays; Appellant did not work on 7 December because he had been discharged by the Master when he attempted to rejoin the ship and Appellant was on board to be repatriated. The hearing was then adjourned to 22 December to await the appearance of the ship's Chief Mate as a witness for the Investigating Officer. Appellant was not present when the hearing was reconvened on 22 December and three later dates, the last of which was 7 March when the Chief Mate testified. Two attempts to contact Appellant by mail were unsuccessful.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and three specifications had been proved on the basis of the Chief Mate's testimony. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of six months on eighteen months's probation.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Examiner. It is contended that:

1. Appellant did not receive notice of the dates to which the hearing was adjourned after 22 December. As a result, he was deprived of his rights to testify, to produce witnesses, and to cross-examine the Chief Mate.
2. The order on 29 November was unlawful because the crew was only required to perform necessary work on Sunday unless all hands were called. The logging for this was later rescinded.
3. Since Appellant was being repatriated after his discharge, he was not required to work as a crew member on 7 December.

In conclusion, it is submitted that the specifications should be dismissed or the hearing should be reopened to protect Appellant's rights.

APPEARANCE on appeal: Anita Streep, Esquire, of New York City, of Counsel.

OPINION

Counsel for Appellant has submitted letters requesting that the hearing be reopened to take further testimony and containing statements by members of the crew which support the contentions made in Appellant's opening statement and on appeal. The Examiner apparently overlooked the fact that Appellant intended to raise these affirmative defenses at the hearing. This is indicated by the statement of the Examiner that Appellant "had made no opening statement" (R.19).

In view of these factors considered in conjunction with the fact that Appellant did not receive actual notice of the three hearing dates after 22 December, the case will be remanded in accordance with the alternative request on appeal. Although Appellant was at fault for not contacting the Coast Guard when he failed to appear on 22 December as directed by the Examiner, Appellant was present on 16 December and all of the four adjournments were requested by the Investigating Officer to await the appearance of his witness. Presumably, Appellant would at least have submitted his own testimony on 16 December if the Government witness had been present.

The findings that Appellant disobeyed a lawful order on 29 November 1959 and was absent from his duties without authority on 7 December 1959 are set aside.

ORDER

The order of the Examiner dated at New York, New York, on 16 March 1960, is VACATED. The record is REMANDED with directions to reopen the hearing for the introduction of additional evidence and such other action as is considered by the Examiner to be appropriate.

J. A. HIRSHFIELD
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 18th day of April 1961.